



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: OCTOBER 18, 2022

IN THE MATTER OF:

Appeal Board No. 624297

PRESENT: MICHAEL T. GREASON, MEMBER

In Appeal Board Nos. 624296 and 624297, the claimant appeals from the decisions of the Administrative Law Judge filed June 16, 2022, insofar as they denied the claimant's application to reopen A.L.J. Case Nos. 016-11005 and 016-11434 and continued in effect the initial determinations holding the claimant ineligible to receive benefits, effective October 7, 2015 ending October 13, 2015, on the basis that the claimant was not totally unemployed; charging the claimant with an overpayment of \$425 in benefits recoverable pursuant to Labor Law § 597 (4); reducing the claimant's right to receive

future benefits by 24 effective days and charging a civil penalty of \$ 100 on the basis that the claimant made willful misrepresentations to obtain benefits; and disqualifying the claimant from receiving benefits, effective October

14, 2015, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of \$6460 in benefits recoverable pursuant to Labor Law § 597 (4); and reducing the

claimant's right to receive future benefits by 0 effective days and charging a civil penalty of \$ 969 on the basis that the claimant made a willful misrepresentation to obtain benefits.

At the combined telephone conference hearings before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances by the claimant and on behalf of the employer and the Commissioner of Labor.

Our review of the record reveals that the case should be remanded to hold a hearing. The claimant was not present at the adjourned hearing held on June 14, 2022, because his telephone line was not working and he was unable to receive the telephone call. The claimant will be given another opportunity to appear and present testimony and other evidence on the issues of his applications to reopen A.L.J. Case Nos. 016-11005 and 016-11434 and the initial determinations: holding the claimant ineligible to receive benefits, effective October 7, 2015 ending October 13, 2015, on the basis that the claimant was not totally unemployed; charging the claimant with an overpayment of \$425 in benefits recoverable pursuant to Labor Law § 597 (4);

and reducing the claimant's right to receive future benefits by 24 effective days and charging a civil penalty of \$ 100 on the basis that the claimant made willful misrepresentations to obtain benefits; and disqualifying the claimant from receiving benefits, effective October 14, 2015, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of \$6460 in benefits recoverable pursuant to Labor Law § 597 (4); and reducing the claimant's right to receive future

benefits by 0 effective days and charging a civil penalty of \$ 969 on the basis that the claimant made a willful misrepresentation to obtain benefits. The claimant is directed to provide the hearing section with a telephone number, connected to a landline, if at all possible, where he can be reached at the date and time of the remand hearing.

Although multiple hearings were held, the parties have not had the opportunity to confront each other. The representative of the Commissioner of Labor and the employer shall be given the opportunity to cross-examine the claimant on the testimony he gave at the hearing held on May 6, 2022. The Commissioner of Labor is instructed to produce Senior Unemployment Insurance Hearing Representative Bruce Wong so that the claimant may be afforded an opportunity to cross examine this witness as to the testimony he gave on June 14, 2022. The parties are directed to make arrangements with the hearing section to review the transcripts of the March 1, 2022, May 6, 2022, and June 14, 2022, hearings prior to the remand hearing. The parties shall have the opportunity to present further relevant testimony and evidence, cross-examine adverse witnesses, and make closing statements.

Now, based on all of the foregoing, it is

ORDERED, that the decisions of the Administrative Law Judge , insofar as they denied the claimant's application to reopen A.L.J. Case Nos. 016-11005 and 016-11434 and continued in effect the initial determinations, be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing the claimant's application to reopen A.L.J. Case Nos. 016-11005 and 016-11434 and the initial determinations as set forth above, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render new decisions which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER